

BANKRUPTCY INSIDER

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Bankruptcy Database

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DIP grip

Credit bids based on postpetition loans are on the rise

Loan to own" is by no means a novel concept in bankruptcy sales.

Hedge funds and private equity firms over the years have positioned themselves to acquire controlling interests in distressed companies by extending loans with hefty rates and seemingly impossible-to-avoid default covenants.

And when such companies inevitably end up in bankruptcy, the prepetition debt can be rolled into a credit bid for the debtors' assets at a Section 363 auction.

But over the past year, it seems, a wrinkle has been added to the loan-to-own strategy. Increasingly, potential purchasers are providing bankrupt companies with debtor-in-possession loans to keep them afloat. The lenders simultaneously seek stalking-horse status in an auction where they plan to credit bid the DIP.

"I'm seeing it more and more," says veteran bankruptcy attorney Thomas R. Califano of **DLA Piper US LLP**. "It's always been there, but it's certainly more prevalent now. You're going to see it more [in the future] as more overly leveraged companies get in trouble."

Califano is lead debtor counsel to **InPhonic Inc.**, the latest example. The Washington-based wireless service provider designated a **Versa Capital Management Inc.** affiliate as the stalking-horse bidder for an upcoming auction set for Dec. 12.

About one week before the Nov. 8 InPhonic filing, the affiliate purchased InPhonic's debt on a secured term loan from **Goldman Sachs Credit Partners LP** and **Citigroup Inc.** But the Versa affiliate is also providing a \$25 million DIP, which it will couple with the prepetition debt, for a total \$50 million credit bid.

In papers filed with the U.S. Bankruptcy Court for the District of Delaware, the company says it had an "immediate" need for the DIP to preserve the value of its assets until the mid-December auction.

"The right strategy is to buy the prepetition debt, but sometimes you have to keep the company going" until you can close a sale, Califano says.

But in at least one case, a potential buyer has used a DIP to get the inside track on a purchase when a debtor didn't initially need postpetition financing to stay afloat.

Greenwich, Conn., software holding company **Halo Technology Holdings Inc.** had no intention of seeking a DIP when it filed for Chapter 11 in the U.S. Bankruptcy Court for the District of Connecticut on Aug. 20.

Halo even asserted that prepetition lender **Fortress Group Inc.** had a \$12 million equity cushion on \$7 million in debt.

But when Halo was unable to reach a permanent cash collateral deal with Fortress, it found a way to access additional cash—whether it needed it or not—and, more importantly, secure an

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Skadden, Arps, Slate, Meagher & Flom LLP has appointed **Chris Mallon** to serve as co-head of its European restructuring practice.

London-based Mallon will share the leadership role with **N. Lynn Hiestand**, also based in the British capital.

Mallon formerly worked at **Weil, Gotshal & Manges LLP** and has been involved in the Enron Corp., **Eurotunnel Group**, **Global Crossing Ltd.**, **Parmalat Finanziaria SpA** and WorldCom Inc. cases.

John Pidcock is the new director of the credit recovery services practice at **Bridge Associates LLC**.

Pidcock has been at the turnaround, crisis and interim management firm since 2002. The director worked on the wind-down of Polaroid Corp. and advised the unsecured creditors' committees of Level Propane Inc. and **Spinner Industries Inc.**

He previously was a manager in **Deloitte Consulting LLP's** reorganization services group.

Milbank, Tweed, Hadley & McCloy LLP has elected 11 new partners.

Abhilash M. Raval formerly was a New York-based associate in Milbank's financial restructuring group. He represents investors, lenders and creditors in Chapter 11 cases, out-of-court restructurings, debt and equity financings, and distressed mergers and acquisitions.

He recently has been involved in cases including **Communications Corp. of America**, **aaiPharma Inc.**, **Winn-Dixie Stores Inc.**, Enron Corp. and **OCA Inc.**

Daniel Perry was named a partner in Milbank's litigation department in Los Angeles. He concentrates on complex civil and corporate litigation, including bankruptcy matters.

New York-based tax lawyer **Russell J. Kestenbaum** advises clients on issues related to bankruptcies and out-of-court restructurings, as well as tax-related aspects of initial public offerings, mergers and acquisitions, debt issuances and structuring of private equity funds.

Hunton & Williams LLP has added **David R. Wiles** and **Timothy R. Ryan** to its financial services practice in Charlotte, N.C.

The two partners will focus mostly on U.S. and cross-border syndicated and leveraged finance transactions. Both have experience in restructuring finance deals.

Wiles previously worked at **Bank of America Corp.**, where as associate general counsel in the global corporate

and investment banking group he covered areas including distressed debt and special assets.

Ryan formerly was a partner at **Mayer Brown LLP**. His assignments included syndicated and leveraged transactions, mezzanine and bridge facilities, and workouts and restructurings.

Cleary Gottlieb Steen & Hamilton LLP has named eight new partners and 11 new counsel, including three with experience in bankruptcy or restructuring.

Avi E. Luft, a New York-based counsel, focuses on litigation and arbitration, including bankruptcy matters. He represents an investment bank in a suit springing from trading of Enron Corp. commercial paper.

Benet J. O'Reilly, a New York partner, concentrates on mergers and acquisitions, private equity investments and restructuring transactions.

Joyce E. McCarty, a counsel in Washington, D.C., focuses on corporate and financial transactions. She has significant experience in representing clients on environmental matters, including their relation to bankruptcy.

All promotions will be effective Jan. 1.

Leech Tishman Fuscaldo & Lampl LLC added **Crystal H. Thornton-Illar** to its bankruptcy and creditors' rights practice group as an associate.

Goldman Sachs Group Inc. reportedly has raised two distressed-debt funds. The \$1.8 billion Liquidity Partners III will invest in leveraged loans and other debt that banks have been unable to unload. Liberty Harbor, a \$2.7 billion credit hedge fund, will also exploit distressed opportunities brought on by the credit crunch.

Mortgage lenders have powered **Edward Casas** and **Neil Luria** of **Navigant Capital Advisors LLC** to the top of this week's ranking of the hottest investment bankers.

The two have picked up assignments advising **GMAC** in the bankruptcies of **Alliance Bancorp Inc.**, **First Magnus Financial Corp.**, **Mila Inc.** and **Oak Street Mortgage LLC** in the six months ended Nov. 12.

Russ Belinsky and **Brian Cullen** of **Duff & Phelps LLC** share second with **James Feltman** of **Mesirow Financial Holdings Inc.** All picked up two new assignments.

Belinsky and Cullen advise **Ronco Corp.** and unsecured creditors of **Amp'd Mobile Inc.**, while Feltman provides financial advice to **SCO Group Inc.** and unsecured creditors of **1031 Tax Group LLC**. ■

—David Elman

HOTTEST INVESTMENT BANKERS

Ranked by bankruptcy-related engagements in new cases filed in the U.S. during the six months ended Nov. 12, 2007

Rank	Professional	Firm	No. of new cases
1	Edward Casas	Navigant Capital Advisors LLC	4
	Neil Luria	Navigant Capital Advisors LLC	4
2	Russ Belinsky	Duff & Phelps LLC	2
	James Feltman	Mesirow Financial Holdings Inc.	2
	Brian Cullen	Duff & Phelps LLC	2

Source: www.BankruptcyInsider.com

The recent Chapter 11 filings of prominent homebuilders **Dunmore Homes Inc., Meyer-Sutton Homes Inc., Elliott Holding Co., Levitt and Sons LLC** and countless smaller ones may have less to do with the crisis in the subprime mortgage industry and faltering U.S. housing market than one would think.

The real problem plaguing the housing industry is the mainstream press, or that's what the CEO of struggling builder **Toll Brothers Inc.** would have you believe.

"Perhaps as the presidential campaign heats up and moves to the front page, negative articles about housing will move off the front page," Robert Toll said in a conference call with analysts.

Toll said a survey of his company's customers who canceled contracts showed that only 11% reported trouble getting mortgages, while "people who just wanted to walk" accounted for 17% of the calculations. "Translation, they've read one too many [New York] Times articles and decided now is not the time to buy a home," he said.

That Toll blamed his industry's woes on the media is curious, since his brother, Bruce, is vice chairman of Toll Brothers' board and last year joined a \$515 million deal to buy The Philadelphia Inquirer and Philadelphia Daily News from **McClatchy Co.** Bruce Toll now serves as chairman of parent **Philadelphia Media Holdings LLC.**

—John Blakeley

In more homebuilder news, perhaps liquidating luxury homebuilder **Agua Dulce Partners** would have been better off if it had steered away from its prepetition promotion as "the official home builder of the Texas Rangers," since companies affiliated with sports teams have had a difficult history.

Sports stadiums have been named for Enron Corp., PSINet Inc. and **Movie Gallery Inc.**, and all have filed for bankruptcy. And Agua Dulce is keeping the trend alive with Major League Baseball's Rangers.

Oddly, however, the company filed for Chapter 11 on Sept. 4 in the U.S. Bankruptcy Court for the Northern District of Texas in Dallas as "Aqua Dulce," but the case was terminated for insufficient documents on Oct. 17.

The builder filed again on Nov. 6, this time for Chapter 7 in the same court and under its proper name.

—Terry Brennan

When **First Citizens Bank & Trust Co.** and bankrupt **Complete Communications Services Inc.** struck a deal that ended the lender's plans for a Chapter 11 trustee,

it caused a sigh of relief for those involved, says Lynn Butler, CCS' counsel at **Brown McCarroll LLP.**

"It was a cathartic event," he jokes, and with good reason.

A long-running battle with First Citizens led to CCS' Chapter 11 filing in the U.S. Bankruptcy Court for the Western District of Texas in Austin. And even after the filing, the relationship remained antagonistic due to allegations that the debtor engaged in fraud and mismanagement.

According to the agreement between the parties, an examiner would be appointed in the case to act more as a chief restructuring officer than an investigator. "At least temporarily, everyone is where they need to be now—able to sit down and negotiate a plan," Butler says.

—Ben Fidler

COMPILED AND EDITED BY
SHANON D. MURRAY, WITH STAFF REPORTS

The owners of **Linsu Corp.**, which operates a nudist resort featuring a nude restaurant, may

not don clothing for dinner, but they just may have to cover up when they appear in the U.S. Bankruptcy Court for the Central District of California in Riverside. Linsu, which operates the Desert Shadows Resort & Spa, filed for Chapter 11 on Oct. 19.

According to the resort's Web site, it offers a clothes- and stress-free vacation. "It is one grand nudist hideaway that flows seamlessly from romantic courtyards through magnificently landscaped grounds. This clothes-free retreat where summer never ends is a perfect place for wholesome nude recreation," the Web site says.

Of course, bankruptcy has made plenty of debtors feel naked. Linsu's managers should then feel right at home.

—Jamie Mason

ZOMBIE WATCH: Due to a needed deferral of a Dec. 15 interest payment and the demise of a potential merger of **American Color Graphics Inc.** with a competitor, **Moody's Investors Service** has further junked its ratings on the company, affecting about \$280 million of its rated debt.

At issue for Moody's is ACG's tight liquidity and the company's questionable ability to operate as a going concern without a near-term restructuring event or sale of the company. Privately held Brentwood, Tenn.-based ACG is a print services provider.

In October, Baltimore-based **Vertis Inc.**, a privately held printing and advertising company, called off the proposed merger with ACG. At the time, Vertis said it was prepared to entertain further discussions. Maybe acquiring ACG out of bankruptcy would be more palatable? ■

—Shanon D. Murray

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Dana seeks \$2B exit loan

Dana Corp. is hoping it can join a list of debtors that recently have secured court approval of exit financing deals.

The Toledo, Ohio-based auto parts maker is set to head to the U.S. Bankruptcy Court for the Southern District of New York in Manhattan on Nov. 28 for a hearing on a commitment and fee letter for a \$2 billion exit financing.

Although Dana has not finalized the proposed loans or selected the lender or lenders that would provide them, in court documents filed Nov. 8 it envisions a \$1.35 billion term loan and a \$650 million revolver. The loans would have maturities between five and seven years.

The revolver would remain undrawn upon closing, while Dana would use the term loan to pay claims under the company's reorganization plan, such as amounts outstanding on its debtor-in-possession loan. Any excess proceeds would remain on Dana's balance sheet upon emergence.

Bankruptcy judges approved a \$400 million exit loan commitment for snack-foods maker **Interstate Bakeries Corp.** on Nov. 7 and a \$425 million commitment for auto parts maker **Dura Automotive Systems Inc.** on Nov. 8.

Fellow auto parts maker **Delphi Corp.** on Nov. 16 received approval of the fee letter for a \$6.8 billion exit funding, and chemicals maker **Solutia Inc.** is slated to appear in the Manhattan court Nov. 20 for a hearing on its \$2 billion exit loan.

Dana says that, with the help of investment banker **Miller Buckfire & Co. LLC**, it began contacting potential lenders in mid-October, looking for a fully underwritten \$2 billion commitment. Miller Buckfire received competitive proposals from more than 10 "global financial institutions," filings show.

The debtor will select the "optimal" financing package and negotiate the loan documents with the lender or lenders that ultimately provide the loan.

Dana, hoping to emerge by the end of 2007, planned to file the commitment letter outlining the financing with the court by Nov. 16.

The exit loan, in combination with a rights offering and an investment by **Centerbridge Capital Partners LP** and a group of the company's bondholders, would finance Dana's emergence from court protection.

Through the plan, Centerbridge has committed to buying \$250 million in new Series A preferred stock. The private equity firm would also backstop \$250 million of a \$540 million rights offering for Series B preferred stock.

Unsecured bondholders would backstop the remaining \$290 million of the rights offering.

Under Dana's plan, unsecured creditors, with total claims of \$2.5 billion to \$3 billion, would recoup anywhere from 72% to 86%.

Dana's common stockholders are expected to be wiped out.

A confirmation hearing is currently set for Dec. 10. ■

—Ben Fidler

BANKRUPTCY CALENDAR



(Upcoming hearings of note)

11/19/07

Pac-West Telecomm Inc.

U.S. Bankruptcy Court for the District of Delaware, Wilmington
Confirmation hearing
Debtor counsel: *Saul Ewing LLP*

Arlington Hospitality Inc.

U.S. Bankruptcy Court for the Northern District of Illinois, Chicago
Confirmation hearing
Debtor counsel: *Jenner & Block LLP*

11/20/07

PLVTZ Inc.

U.S. Bankruptcy Court for the Southern District of New York, Manhattan
Hearing to consider bidding procedures
Debtor counsel: *Jones Day*

Remy Worldwide Holdings Inc.

U.S. Bankruptcy Court for the District of Delaware, Wilmington
Disclosure statement and confirmation hearing
Debtor counsel: *Shearman & Sterling LLP*

New York Racing Association Inc.

U.S. Bankruptcy Court for the Southern District of New York, Manhattan
Disclosure statement hearing
Debtor counsel: *Weil, Gotshal & Manges LLP*

William B. Kessler Memorial Hospital Inc.

U.S. Bankruptcy Court for the District of New Jersey, Camden
Confirmation hearing
Debtor counsel: *Ciardi & Ciardi PC*

Solutia Inc.

U.S. Bankruptcy Court for the Southern District of New York, Manhattan
Hearing to consider approval of exit financing commitment
Debtor counsel: *Gibson, Dunn & Crutcher LLP*

Avado Brands Inc.

U.S. Bankruptcy Court for the District of Delaware, Wilmington
Sale hearing
Debtor counsel: *Greenberg Traurig LLP*

MORE CALENDAR ENTRIES ARE AVAILABLE ON
WWW.BANKRUPTCYINSIDER.COM. DATES ARE SUBJECT TO CHANGE.

Levitt latest homebuilder casualty

Not even a famous name is enough for a homebuilder in the current housing market.

Blaming “unprecedented conditions in the home building industry,” Levitt and Sons LLC, the homebuilding unit of **Levitt Corp.**, filed for Chapter 11 on Nov. 9 in the U.S. Bankruptcy Court for the Southern District of Florida in Fort Lauderdale.

Abraham Levitt founded Levitt and Sons in 1929, but the company made its name in the 1940s when it created Levittown on New York’s Long Island.

Levitt built huge developments of affordable homes for returning World War II veterans ready to start families. The houses were built on potato farms and sold for as little as \$8,000. A similar suburb, Levittown, Pa., is also named after Levitt.

Levitt’s filing follows those of many other builders, most recently **Dunmore Homes Inc.** (Nov. 8) and Chicago-based builder **Neumann Homes Inc.** (Nov. 1).

In addition, Hollywood, Fla.-based **TOUSA Inc.** on Nov. 14 reported a loss of \$619.7 million for the quarter ended Sept. 30 and said it has “substantial doubt about its ability to continue as a going concern.” TOUSA is exploring its restructuring options, including a Chapter 11 filing.

With more than \$400 million in assets and more than 200,000 homes built, Fort Lauderdale-based Levitt is the biggest homebuilder to seek Chapter 11 this year, according to www.BankruptcyInsider.com. The company said it will look to sell some, if not all, of its assets while in bankruptcy.

“The homebuilding industry is going through a dramatic slowdown after years of strong growth [that’s been] driven, in part, by speculative activity by investors and tightening credit availability,” chief restructuring officer Lawrence E. Young of **AlixPartners LLP** says in an affidavit.

Young, who was appointed CRO on Oct. 22, says the housing downturn has been “particularly sudden and steep” in the Southeast, especially in Florida,

where Levitt has concentrated its operations in recent years.

Indeed, citing statistics from the National Association of Realtors, Young notes demand for existing U.S. homes in September slid 8% to an annual rate of 5.04 million, the lowest sales pace in nearly 10 years. Meanwhile, inventories of available homes rose 0.4% by the end of September to 4.4 million.

Levitt began to scale back operations

in early 2006 by exiting the Memphis and Nashville markets. And by September, the company ceased all new land development projects and suspended building of new housing contracts.

Nonetheless, Levitt recorded a \$9 million loss in 2006, after posting profit of \$22 million and \$33 million in 2005 and 2004, respectively.

Its parent, Levitt Corp., posted a \$169.2 million loss in the third quarter, stemming mostly from Levitt and Sons’ red ink. ■ —John Blakeley

Levitz explores sale—again

Despite having a still active 2005 bankruptcy case, Levitz Furniture has returned to Chapter 11.

Levitz says its Nov. 8 petition, its third in 10 years, will aid it in evaluating its options, including a potential investment or sale. Still, the New York-based home furnishings retailer is set to seek approval of bidding procedures on Nov. 20 in the U.S. Bankruptcy Court for the Southern District of New York in Manhattan.

The procedures do not contemplate a stalking-horse bidder but would give the retailer the ability to select an offer to serve as the baseline bid. The procedures require a 10% deposit and a 3% breakup fee.

If an auction were held, bids would have to increase in \$100,000 increments.

Levitz is seeking a Nov. 26 bid deadline, Nov. 28 auction and Nov. 29 sale hearing, court documents show.

Judge Robert E. Gerber of the Manhattan court on Nov. 9 approved the company’s interim use of cash collateral.

A final hearing is set for Nov. 29 if there are objections. If no objections were received, the final order would be entered without a hearing.

Prentice Capital Management LP formed current debtor **PLVTZ Inc.** in December 2005 to purchase the assets of Levitz for \$93 million, a source close to the case says.

According to a source, Levitz’s previous case, filed on Oct. 11, 2005, is technically ongoing and will be structurally dismissed after the funds are distributed to creditors.

Court documents show the company has experienced financial difficulties since 2005. Since then, \$200 million has been invested in the company by its shareholders, but Levitz has continued to lose money. For the nine months ended Sept. 30, the debtor had negative Ebitda of \$20.7 million and negative net cash from operations of \$22.4 million.

Secured creditor **GE Capital Corp.** is owed \$32.63 million on an \$85 million credit facility. Levitz also has \$9.9 million of standby letters of credit outstanding and owes **YA Global Investments LP** \$22.7 million on a secured convertible debenture, documents show.

Levitz first filed for Chapter 11 on Sept. 5, 1997, as Levitz Furniture Corp., then merged with rival Seaman Furniture Co. The combined company exited bankruptcy as Levitz Home Furnishings Inc. in 2001.

Levitz sells furniture, bedding and home furnishings, operating 76 stores mostly in the Northeast and on the West Coast. The company has 1,805 employees. ■ —Jamie Mason

Firm offer

Gallery's postpetition lender—and potential buyer—doesn't want it changing beds

Bankruptcy cases often make for strange bedfellows, and even unique arrangements.

While a debtor-in-possession financing agreement between two mattress makers in the case of **Gallery Corp.** is by no means the former, it definitely has some suggestions of the latter—making for a proceeding that will certainly evolve once a newly appointed creditors' committee flexes its muscles.

Los Angeles-based Gallery, a bedding manufacturer that does business as Mattress Gallery, has been scouring the industry for a buyer that would be willing to help it pay off its debts and survive in what has become a turbulent market.

Indeed, when the company filed for Chapter 11 on Nov. 1, it claimed that several macroeconomic factors—everything from the subprime crisis to high gas prices—had contributed to sales numbers that weren't sufficient to keep its 52-store business booming.

Citing industry players such as **Serta Inc.** and **Mattress Firm Inc.**, as well as a few other unidentified companies, Gallery noted that it had conducted an exhaustive search beginning in August for a strategic buyer. What it found was Cerritos, Calif.-based **Ortho Mattress Inc.**, and a fairly unique transaction.

Ortho has offered to purchase all the stock of a reorganized Gallery in a transaction that is to be carried out through a liquidation plan to be filed by the debtor. But the deal is highly contingent on a \$1.93 million DIP that is baked into the coming sale.

Court papers don't specify the exact amount of the offer but note that Ortho is going to pay the DIP, a cash payment and "the performance of certain other obligations" in return for the stock.

Gallery struck a deal with Ortho because secured lender **Kimco Securities Corp.** was not interested in providing a loan and would consent only to the loan if given added protections Gallery has agreed to provide.

Gallery, for example, has granted Kimco a second-lien position on its unencumbered leasehold interests (Ortho would get a first-lien position), while Kimco would also be granted replacement liens for Gallery's prepetition collateral.

But the control that Ortho seeks doesn't stop there. In the DIP motion, Gallery reveals that it has agreed "not to

Commitment: \$1.93 million

Lender: Ortho Mattress Inc.

Pricing: Prime plus 300 basis points

Term: Expires in three months

Fees:

- 2% commitment fee (would be waived if the proposed liquidation plan is confirmed)

Carve-out: \$225,000

support or facilitate any competing overtures or bids," a stipulation that comes across as a no-shop provision in that Ortho would essentially be able to bypass an auction under Section 363 of the Bankruptcy Code and go straight toward a sale.

The provision has already drawn the ire of one of Gallery's creditors, **Sealy Inc.**, which finds

it "critical" that the leasehold interests remain unencumbered, as they could create value that could be monetized for unsecured creditors.

"The debtor's papers are stunningly silent on the possible range of values on their leasehold interests," Sealy says.

In addition, Sealy deems the DIP to constitute an "unfair lockup" and its approval to be "first-day approval of a sub-rosa plan" of reorganization.

According to a person close to the situation, however, Gallery is confident that the postpetition loan and its commitment letter with Ortho do not contain a flat no-shop provision because it has what the source terms "a fiduciary out."

"If something else comes along, they have the right to look at it," the source explains, specifically noting that the offer must come to Gallery and not vice versa.

The source also reveals that Ortho recently agreed to a confidentiality agreement that expands the potential powers of Gallery's buyer search.

Namely, if there is a group interested in looking at the assets and its offer is deemed "real and legitimate," the prospective buyer can have access to Gallery's due diligence room.

"[Ortho has] been helpful in kind of lessening the restrictions on Gallery," the source says.

So it would appear that the proposed no-shop restriction has already been relaxed, perhaps in anticipation of the manner in which it will be received by Gallery's official committee of unsecured creditors, which was appointed Nov. 8.

As the source acknowledges, the anticipation is that the creditors' committee will use "a little bit of elbow power" and ask the court to allow for Gallery to be fully shopped.

It couldn't hurt Gallery or its creditors for the process to be opened up. But then again, Ortho may not be so happy to be in a crowded bed. ■

—Ben Fidler

Salander-O'Reilly can tap \$630,000

New York art dealer **Salander-O'Reilly Galleries LLC** has secured interim approval on a debtor-in-possession loan, though several brush strokes remain.

Judge Cecelia G. Morris of the U.S. Bankruptcy Court for the Southern District of New York in Poughkeepsie on Nov. 13 granted access to \$630,000 of the \$1.5 million DIP from prepetition lender **First Republic Bank**, says debtor counsel Robert Raicht at **Halperin Battaglia Raicht LLP**.

Salander will use the DIP, priced at prime plus 500 basis points, to continue operations, as First Republic accelerated the \$25.34 million due on a prepetition loan after Salander defaulted.

Several creditors, however, have taken issue with language in the proposed order, documents show. No interim order had been entered by Nov. 16.

Morris also approved the interim use of cash collateral and the interim appointment of turnaround firm **Triax Capital Advisors LLC** over the objections of a half-dozen creditors.

The court set Dec. 13 to hear final DIP and cash collateral motions; Morris will consider retention of Triax on a final basis on Feb. 14.

Creditor Earl Davis alleges in court documents that First Republic crafted an "unholy alliance" with Salander chief restructuring officer Joseph Sarchek of Triax "in exchange for the CRO's promise to pay [owner] Law-

rence Salander \$600,000 per year."

The battles over the DIP and the hiring of Triax are the first of what promise to be many in a contentious case.

Former tennis pro John McEnroe, auction house **Sotheby's Inc.**, hedge fund manager Roy Lennox of **Caxton Associates LLC** and Arthur Carter, former publisher of The New York Observer, are among a score of parties that have filed lawsuits against Salander.

The complaints allege that the dealer sold art without permission and then

failed to pay the proceeds, as well as defaulting on loans from the owners.

Three creditors owed a combined \$4.61 million on Nov. 1 filed an involuntary Chapter 7 petition against the art gallery, two days after police raided the home of Salander.

Morris converted the proceedings to a voluntary Chapter 11 on Nov. 9.

Salander says in court papers the lawsuits and a preliminary injunction that shut down its operations forced its filing. It hopes to resolve the litigation and any financing issues while in bankruptcy. ■ —Terry Brennan

Movie Gallery gets final DIP nod

The Chapter 11 case of **Movie Gallery Inc.** has moved to the second reel.

Chief Judge Douglas O. Tice Jr. of the U.S. Bankruptcy Court for the Eastern District of Virginia in Richmond on Nov. 14 approved a lock-up agreement with a group of noteholders and second-lien debtholders.

Tice also gave Dothan, Ala.-based Move Gallery final approval on its \$150 million debtor-in-possession loan from prepetition lender **Goldman Sachs Credit Partners LP**.

Under the lock-up agreement, the participants have agreed to vote in favor of a reorganization plan that would give plan sponsor **Sopris Capital Advisors LLC**, Movie Gallery's largest second-lien debtholder, a controlling interest in the company in exchange for its \$72 million in claims.

Sopris would also backstop a \$50 million rights offering to noteholders.

Meanwhile, holders of 11% senior subordinated notes due 2012, owed about \$325 million, also would convert their claims into equity.

The DIP consists of a \$100 million term loan and \$50 million revolver, both priced at a base rate plus 250 basis points or adjusted Eurodollar rate plus 350 basis points.

Movie Gallery negotiated the lock-up agreement Oct. 14, two days before seeking Chapter 11 protection in Richmond. ■ —John Blakeley

AHM gets 2nd \$50M DIP

American Home Mortgage Investment Corp. has secured the funding it hopes will sustain its servicing unit until it closes its sale sometime next year.

Judge Christopher S. Sontchi of the U.S. Bankruptcy Court for the District of Delaware in Wilmington on Nov. 14 approved interim use of a \$50 million debtor-in-possession loan from Wilbur L. Ross Jr.'s AH Mortgage Acquisition Co.

Mortgage lender AHM can tap \$35 million; a final hearing is set for Nov. 28.

The \$50 million DIP has an interest rate of LIBOR plus 300 basis points and a facility fee of 0.5%. The loan matures when the sale of the loan servicing business to AH Mortgage closes.

AHM expects the transaction to close in two steps. The

Melville, N.Y., company says in court documents it anticipates an initial closing in mid-November and a final closing by Sept. 30, 2008.

Sontchi approved the deal, valued at \$430 million to \$500 million, on Oct. 23.

"The [asset purchase agreement] provides that from and after the initial closing, the purchaser will fund the obligations associated with the servicing business," court documents say.

AHM's initial \$50 million DIP from an affiliate of Ross' **WL Ross & Co. LLC** did not allow for funding the servicing business, and the debtor will be unable to tap cash collateral after the initial closing.

That loan is also priced at LIBOR plus 300 basis points and matures 12 months after its closing date or the effective date of a reorganization or liquidation. ■ —Jamie Mason

Calpine strikes two settlements

Calpine Corp. has resolved two disputes with noteholders ahead of what's expected to be a bruising valuation hearing between the energy company and its official committee of equity security holders.

San Jose, Calif.-based Calpine has already prepaid through postpetition fi-

for the groups say litigation could have spiraled long past plan confirmation.

Under the first settlement, the Calpine first-lien noteholders will receive a \$50.4 million secured claim plus a \$33.4 million unsecured one, documents show.

Law Debenture Trust Corp. of

one way or the other," he says, through either a sale or payment in full. "There was otherwise a good chance that whatever the Bankruptcy Court ruled on this matter, it would have ended up first in [U.S.] District Court and then the [U.S. Court of Appeals for the] 2nd Circuit, [and] that could have dragged on for awhile under appeal."

The second settlement will give the CalGen first-lien noteholders a \$29.1 million unsecured claim for default interest and a \$20.1 million unsecured claim for the make-whole premium and damage claims, documents show. The secured noteholders had sued for the right to file a secured claim.

"We thought we were entitled to a secured make-whole claim instead of an unsecured one, but we believe that now we should be getting close to a 100% recovery on the unsecured claim," says Amanda Darwin, counsel for indenture trustee **Wilmington Trust Corp. at Nixon Peabody LLP.**

Judge Burton Lifland of the U.S. Bankruptcy Court for the Southern District of New York in Manhattan is set to consider the two separate stipulation motions on Nov. 27.

He granted Calpine the right to prepay the first-lien notes in May 2006 and \$2.52 billion in CalGen debt in March. Holders of second- and third-lien CalGen notes still are appealing the prepayment in U.S. District Court.

Calpine already had settled with one noteholder group. The company and holders of \$3.77 billion in second-lien notes agreed in August that the group would waive any make-whole claims for four quarterly payments of \$25.07 million.

Lifland has set aside as many as four days—Dec. 18, 19 and 20 and possibly Dec. 27—for the valuation hearing.

Calpine's investment bank, **Miller Buckfire & Co. LLC**, is due to revise its initial valuation by Nov. 19, and creditors are then expected to submit their votes on the company's third amended reorganization plan by Nov. 30.

Shareholders contend Calpine is solvent, which would assure them an equity recovery once creditors were paid in full. ■ —Terry Brennan

Examiner to probe Tersigni billing

L. Tersigni Consulting PC will soon find itself in an unwanted spotlight.

The Stamford, Conn.-based accountant and financial adviser to asbestos claimants' committees will have its billing practices and related conduct in eight bankruptcies investigated by an examiner.

Visiting Judge Judith K. Fitzgerald of the U.S. Bankruptcy Court for the District of Delaware in Wilmington on Nov. 13 ordered the investigation of LTC's involvement in the ongoing **Federal-Mogul Corp., ACandS Inc., Flintkote Co.** and **W.R. Grace & Co.** cases, as well as that of **USG Corp.** The latter emerged on June 20, 2006.

She also appointed an examiner in three cases in her home court, the Western District of Pennsylvania in Pittsburgh—**Global Industrial Technologies Inc., North American Refractories Co.** and **Pittsburgh Corning Corp.**

The examiner, who hadn't been named as of Nov. 14, is to investigate if the debtors or their estates have any cause of actions against LTC.

Chief Judge Rosemary Gambardella of the U.S. Bankruptcy Court for the District of New Jersey on Nov. 5 appointed an examiner in the ongoing bankruptcy of **G-I Holdings Inc.** to look into LTC's assignment in that case.

The U.S. Trustee Program and the U.S. Attorney's Office have been investigating LTC's billing practices since April 2006, court documents show.

The asbestos claimants' committees, however, didn't find out about the allegations until after sole owner Loreto Tersigni died in May.

"It appears that LTC engaged in a systematic effort to improperly increase its bills in ... many other bankruptcy cases in which LTC was employed," Kelly Beaudin Stapleton, the U.S. Trustee for Delaware, New Jersey and Pennsylvania, says in her request for an examiner.

LTC allegedly padded its bills in up to 18 cases by 5% to 15%. The firm allegedly achieved this by adding to the time entries of its personnel before submitting its fee applications to the bankruptcy courts.

LTC counsel **Heller Ehrman LLP** has conducted a study on the allegations and reported its findings to the UST. ■ —Shanon D. Murray

nancing both \$646.11 million in first-lien 9.875% notes due 2014 and \$835 million of first-lien debt issued by affiliate Calpine Generating Co. LLC.

The two noteholder groups, however, had filed litigation including adversary proceedings seeking secured make-whole premium claims for the future interest lost on the securities. Attorneys

New York, successor trustee for the notes, had sought a \$97.2 million make-whole premium.

Noteholders expect to recover all \$83.4 million, says Steven Levine, counsel to Law Debenture at **Brown Rudnick Berlack Israels LLP.**

"The unsecured \$33.6 million claim will convert into a full cash payment

Grupo México, Asarco duel

With the value of copper miner Asarco LLC climbing with prices of the metal, nonbankrupt parent **Grupo México SAB de CV** is once again trying to gain a measure of control in Asarco's Chapter 11 case.

Judge Richard Schmidt of the U.S. Bankruptcy Court for the Southern District of Texas in Corpus Christi is set on Nov. 19 to consider a motion that would force Asarco to gain Grupo México's consent before entering claims settlements of more than \$10 million.

Grupo México, the largest mining company in Mexico, hopes to file a rival reorganization plan that would inject \$300 million into Asarco. All creditors would be paid in full, and the parent would retain control over what it contends is its solvent subsidiary.

The motion has run into multiple objections, however, from parties including the official committee of unsecured creditors and the U.S. Environmental Protection Agency.

The creditors' committee labeled the motion another veiled attempt to compel reversal of a corporate governance agreement that was ironed out four months after Asarco's Aug. 9, 2005, bankruptcy filing.

Schmidt stripped control of Tucson, Ariz.-based Asarco from Grupo México

in December 2005 by removing its sole director, Carlos Ruiz Sacristan, and replacing him with an independent board. The creditors had sought Sacristan's ouster by arguing that he was both Asarco's only director and on the board of Southern Copper Corp., which Grupo México then fully owned.

Asarco has filed a fraudulent conveyance suit against a Grupo México vehicle seeking at least \$845 million for the loss of the debtor's 54.2% SCC stake in 2003 to Grupo México. ■

—Terry Brennan

ABFS trustee, noteholders settle

After a marathon 16-hour mediation session, **American Business Financial Services Inc.** has removed another roadblock to administration of its bankruptcy case.

Chapter 7 trustee George L. Miller and the indenture trustees for two series of collateralized notes, **Law Debenture Trust Co. of New York** and **Wells Fargo Bank NA**, reached a settlement on Nov. 6, court papers show.

In the deal, holders of \$97 million in notes will receive a \$40 million superpriority claim and a \$58.15 million unsecured one. Miller will also dismiss the indenture trustees from an adversary proceeding he filed in 2006.

Judge Mary F. Walrath of the U.S. Bankruptcy Court for the District of Delaware in Wilmington is set to consider the settlement on Dec. 19.

"The indenture trustees were blocking the administration of the case. [But the settlement] allows me to administer the bankruptcy and hopefully recoup assets for creditors," Miller says.

The adversary proceeding alleges **Greenwich Capital Financial Products, Ocwen Loan Servicing LLC**, Wells Fargo, Law Debenture, **Berkshire Capital Group LP** and Michael Trickey, a former Berkshire managing director, falsely bolstered the collateral of Philadelphia-based subprime lender ABFS by nearly 350% to attract a \$500 million debtor-in-possession loan from lender Greenwich Capital. ■

—Jamie Mason

continued from cover

offer for one of the subsidiaries it was looking to shed.

SQLMaze LLC, a Connecticut software company—not a typical lender—offered \$1.1 million for a 65% interest in Halo's Kenosia Corp. unit, \$300,000 of which came through a DIP loan junior to the Fortress debt.

While it's rare for a lender to provide a DIP junior to secured debt, it's even more unusual for a DIP to carry no fees, as SQLMaze's did. Halo won't even have to pay the 12% interest rate on the loan if it sells the assets to SQLMaze by Dec. 31.

The DIP effectively functions as a security deposit on Kenosia. Halo's bankruptcy counsel at **Zeisler & Zeisler PC** did not return calls.

Other examples of this recent loan-to-own strategy include private equity

firm **Zinc Holdings LLC**'s \$5 million DIP to bankrupt **MTI Technology Corp.** and a \$4 million DIP that an **Ableco Finance LLC** affiliate extended to **Corvest Promotional Products Inc.** Both loans were rolled into credit bids for assets or units of the debtors.

"You have to have the right situation where there's no alternative to DIP financing," says an attorney who says he's been involved in "several" bankruptcy cases as debtor counsel where a DIP was used to credit bid.

"The acquirer wants the assets, but the debtor needs financing [to survive in the meantime]," he adds.

The attorney, who requested anonymity, says it's often a case of telling the purchaser "if you can't provide the financing, we can't get to the auction."

Some cases out there seem to support the notion. For example, in papers

filed with the U.S. Bankruptcy Court for the Central District of California in Santa Ana, where MTI sought protection Oct. 15, the Tustin, Calif., provider of infrastructure information solutions said it was crucial that it find a buyer "willing to fund operating expenses during the interim period between negotiating and closing the sale."

(Credit bids aren't the only wrinkle when it comes to DIP-induced sales. See page 6.)

DIPs-turned-credit-bids also serve an important function of providing a base offer for a company's assets while also supplying capital.

"You don't go and proactively look for [a DIP]; every case is different," the attorney says. "But sometimes they prime the pump, and an over-bidder comes in with an offer." ■

—John Blakeley

Hospital pushes sale hearing

Syndication difficulties have forced **Physicians Specialty Hospital of El Paso East LP** to delay its auction timeline.

Under a bidding procedures order approved Sept. 26 by Judge Leif Clark of the U.S. Bankruptcy Court for the Western District of Texas in San Antonio, the hospital had planned to hold a Nov. 6 auction and Nov. 9 sale hearing.

Stalking-horse bidder East El Paso Physicians' Medical Center LLC, however, has not been able to complete syndication of the loans behind its \$40 million offer.

EEPPMC also needed "some additional time for due diligence," says debtor counsel Deidre Ruckman of **Gardere Wynne Sewell LLP**. "We expect to see some rival bids at the auction because we've been seeing some interest in the hospital."

Clark, therefore, on Nov. 5 moved the sale hearing to Nov. 30, documents show. The debtor rescheduled a Section 363 auction to Nov. 28 and a bid deadline to Nov. 26.

Clark already has approved a breakup fee of \$300,000 and up to \$100,000 in expense reimbursement if EEPPMC is bested in the auction. Overbidding would start at \$500,000 and would continue in increments of \$500,000.

EEPPMC, a unit of **Surgical Development Partners LLC** of Franklin, Tenn., would pay \$38.5 million in cash and issue new unsecured notes of up to \$1.5 million, Ruckman says. Both the buyer and the seller consist of El Paso physicians, record show.

On Oct. 5, Clark granted final approval to a \$1.5 million debtor-in-possession loan from prepetition lender **J.P. Morgan Chase Bank NA**. The DIP, priced at prime plus 350 basis points, will allow the El Paso hospital to complete a sale. ■

—Terry Brennan

InPhonic receives \$50M offer

Versa Capital Management Inc. has moved closer to acquiring wireless services provider **InPhonic Inc.**

Judge Kevin Gross of the U.S. Bankruptcy Court for the District of Delaware in Wilmington on Nov. 9 gave InPhonic interim access to a \$25 million revolving debtor-in-possession loan from a Versa affiliate.

He also approved bidding procedures for InPhonic, which name the affiliate, Adeptio INPC Funding LLC, as stalking-horse bidder. Adeptio plans to use the DIP and a portion of the prepetition debt it acquired earlier in November to make a \$50 million credit bid for InPhonic.

Under the bidding procedures, competing offers are due Dec. 7. If an auction were held Dec. 12, bidding would have to increase in increments of at least \$500,000.

Adeptio would receive an expense reimbursement of up to \$1 million if it were bested at auction.

A sale hearing is set for Dec. 13.

Under the interim DIP order, Washington, D.C.-based InPhonic can tap \$10 million on the loan, priced at prime plus 325 basis points. The DIP carries a 1% commitment fee, a 1% exit fee and a 0.5% unused facility fee on the unused portion of the revolver.

A final hearing on the loan is slated for Nov. 30.

InPhonic, which sells wireless services and devices for cellular phones through private-label Web sites, filed for Chapter 11 with seven affiliates on Nov. 8.

According to an affidavit filed with the bankruptcy court by chief financial officer Kenneth D. Schwarz, the debtor rapidly burned through cash last year because of factors including overspending on marketing and an inability to maintain an adequate inventory of its most popular devices.

Shortly after defaulting on its prepetition credit line with **Goldman Sachs Credit Partners LP** and **Citigroup**

Inc. on Oct. 5, the company warned that its third-quarter results would fall significantly short of expectations.

InPhonic had tapped Lazard on Oct. 11 to explore a sale of its assets, court filings show.

On Nov. 2, Adeptio purchased InPhonic's secured debt of more than \$90 million from Goldman and Citigroup.

"We expect to proceed quickly with this sale and that the business will have a significantly improved balance sheet, greater operating flexibility and a swift path to profitability," Schwarz said in a statement. ■

—John Blakeley

Bombay to sell intellectual property

Bombay Co. has been cleared to launch a second sale process.

Judge D. Michael Lynn of the U.S. Bankruptcy Court for the Northern District of Texas in Fort Worth on Nov. 14 approved bidding procedures for the sale of the intellectual property of the home furnishings retailer, court documents show.

A joint venture of **Hilco Consumer Capital LLC** and an affiliate of **Gordon Brothers Retail Partners LLC** is stalking-horse bidder.

The JV would create a vehicle known as Newco to license and promote Bombay's intellectual property. The JV would pay Bombay \$1.25 million and commit up to an additional \$1.5 million in capital to Newco. Bombay would own a 25% stake in Newco.

Bids are due Dec. 14, and an auction and sale hearing are set for Dec. 19. The JV would receive a \$30,000 breakup fee plus reimbursement of up to \$20,000 in expenses if it were outbid at auction.

Last month, Bombay awarded the right to liquidate its U.S. stores to a JV of Gordon Brothers and a Hilco affiliate for an estimated \$105 million. ■

—Shanon D. Murray

BANKRUPTCY WARNINGS

- E*Trade Financial Corp. is the subject of a bankruptcy warning by Citigroup Inc. as of Nov. 12
- Imperial Petroleum Inc. is the subject of a going concern warning by Weaver & Martin LLC as of Nov. 8
- Texhoma Energy Inc. is the subject of a going concern warning by GLO CPAs LLP as of Nov. 7
- Ampex Corp. is the subject of a bankruptcy warning by Ampex Corp. as of Nov. 7
- Zingo Inc. is the subject of a going concern warning by Haynie & Co. as of Nov. 7
- Smart-tek Solutions Inc. is the subject of a going concern warning by Zamucen Curren & Holmes LLP as of Nov. 6
- Neurobiological Technologies Inc. is the subject of a going concern warning by Odenberg, Ullakko, Muranishi & Co. LLP as of Nov. 6
- Loehmann's Capital Corp. is the subject of a ratings action by Moody's Investors Service as of Nov. 5
- Docucon Inc. is the subject of a going concern warning by De Joya Griffith & Co. LLC as of Nov. 1
- IsoTis Inc. is the subject of a bankruptcy warning by IsoTis' board of directors as of Oct. 31

SECOND-LIEN DEBT

- Intergraph Corp. had a second-lien term loan rated B by S&P on Nov. 12
- Arinc Inc. had a second-lien term loan rated Caa2 by Moody's on Nov. 9
- Arinc Inc. had a second-lien term loan rated CCC+ by S&P on Nov. 8
- Chrysler Automotive LLC had a second-lien secured term loan rated B by S&P on Nov. 8
- Arrowhead General Insurance Agency Inc. had a second-lien term loan rated CCC+ by S&P on Nov. 7
- Chrysler Automotive LLC had a second-lien secured term loan rated Caa1 by Moody's on Nov. 7
- Chrysler Automotive LLC had a second-lien secured term loan rated BB+ by Fitch on Nov. 7
- ProQuest LLC had second-lien senior secured debt rated B3 by Moody's on Nov. 6
- ProQuest LLC had second-lien senior secured debt rated B by S&P on Nov. 6
- Prodigy Health Group Inc. had a second-lien term loan rated CCC+ by S&P on Nov. 6

—This data will be updated weekly. For more complete information, please see our database at www.BankruptcyInsider.com.

- Naturade Inc. emerged from Chapter 11 on Nov. 13. Ventana Group and Lawrence Financial Group loaned Naturade parent Redux Holdings Inc. \$1.2 million for a cash infusion in the debtor. —Ben Fidler
- Judge Pamela S. Hollis of the U.S. Bankruptcy Court for the Northern District of Illinois on Nov. 13 granted final approval to the debtor-in-possession loan of Jays Foods Inc. Pre- and postpetition borrowings under the loan from LaSalle Business Credit LLC cannot exceed \$25.4 million. —Jamie Mason
- Rockford Products Corp. on Nov. 15 won approval of the sale of its cold-formed products unit to Rockford Acquisition LLC for roughly

\$24 million. The stalking-horse bidder, an affiliate of BlackEagle Partners LLC, beat Stoutheart Corp. in an auction by adding to its original \$22.9 million offer. —J.M.

- Judge Prudence Carter Beatty of the U.S. Bankruptcy Court for the Southern District of New York ruled Nov. 9 that a group of Solutia Inc. noteholders are not entitled to a \$280 million recovery. The holders of 11.25% senior secured notes due 2009 asserted they should receive 101% of the face value of their notes plus accrued and unpaid interest because of a change-in-control clause in the notes' indenture. Instead, the noteholders will recover \$205.9 million under Solutia's

- reorganization plan. —Shanon D. Murray
- Guaranty Bank and Cole Taylor Bank, owed a combined \$48.4 million, won relief from the automatic Chapter 11 stay of homebuilder Neumann Homes Inc. on Nov. 12. The two secured creditors can now take the steps necessary to protect the value of their collateral, Neumann's unfinished houses, including winterization of the properties. —J.M.
- Judge Christopher S. Sontchi of the U.S. Bankruptcy Court for the District of Delaware on Nov. 15 confirmed the liquidation plan of Advanced Marketing Services Inc. Unsecured creditors of the book distributor will recover 27% to 42%. —S.D.M.

Exit financing metrics

Jan. 1–Nov. 14, 2007

	Debtor	Financing date	Amount (\$mill.)
Biggest exit financing commitments			
1	Calpine Corp.	6/20/07	\$10,000.0
2	Delphi Corp.	11/6/07	6,800.0
3	Federal-Mogul Corp.	3/1/07	3,500.0
4	Delphi Corp.	7/18/07	2,550.0
5	Delta Air Lines Inc.	1/30/07	2,500.0

Smallest exit financing commitments

1	Zoetics Inc.	3/13/07	\$0.48
2	Publicard Inc.	8/17/07	0.50
3	American Business Corp.	10/26/07	0.50
4	Pittsburgh Brewing Co.	5/2/07	0.75
5	Trenton Convalescent Center Urban Renewal Assoc. LP	11/6/07	1.30

Most recent exit financing commitments

1	Trenton Convalescent Center Urban Renewal Assoc. LP	11/6/07	\$1.3
2	Delphi Corp.	11/6/07	6,800.0
3	Dura Automotive Systems Inc.	11/5/07	425.0
4	IWT Tesoro Corp.	10/31/07	18.0
5	Solutia Inc.	10/31/07	2,000.0

Source: www.BankruptcyInsider.com

Inside the numbers

Citi on a hill

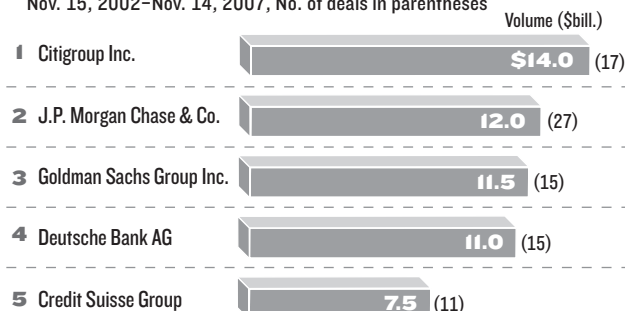
Citigroup Inc. is an urban legend. In the realm of bankruptcy exit financing, Citi is located uptown. Citi is the top financier of companies emerging from bankruptcy protection, providing \$14 billion over the past five years.

A \$2.36 billion loan to Eurotunnel Group represented Citi's largest single commitment. Financing offers from Citi, Goldman Sachs Group Inc. and Deutsche Bank AG to underwrite its debt restructuring, provided light at the end of the tunnel to the railroad operator. On Dec. 18, 2006, the banks provided a £2.84 billion (\$5.5 billion) classic bank loan, underwrote £965 million of convertible bonds and additional credit lines of £225 million.

—Neil Malcolm

Capital flight Top providers of exit financing to bankrupt companies

Nov. 15, 2002–Nov. 14, 2007, No. of deals in parentheses



Source: www.BankruptcyInsider.com

LEAGUE TABLES

Top creditor noninvestment banks

By active cases, as of Nov. 14, 2007

	Firm	No. of active cases
1	Deloitte Touche Tohmatsu	128
2	J.H. Cohn LLP	25
3	BDO Seidman LLP	24
4	Weiser LLP	14
5	Protiviti Inc.	6
6	Traxi LLC	5
7	Invotex Group	3
8	Mahoney Cohen & Co.	3
9	Parente Randolph LLC	3
10	Consensus Advisors LLC	2

Rankings include cases in which firm was hired as financial adviser to creditors, unsecured creditors, secured creditors or to lenders

Source: www.BankruptcyInsider.com

Top creditor noninvestment bankers

By active assignments, as of Nov. 14, 2007

	Professional	Firm	No. of active assignments
1	Chris Campbell	Deloitte Touche Tohmatsu	70
2	Peter Salter	Deloitte Touche Tohmatsu	29
3	Bernard Katz	J.H. Cohn LLP	21
4	James Horgan	Weiser LLP	12
5	Cliff Zucker	J.H. Cohn LLP	11
6	Howard Konicov	J.H. Cohn LLP	7
7	Michael Atkinson	Protiviti Inc.	6
8	Tam Chee Chong	Deloitte Touche Tohmatsu	4
9	Perry Mandarin	Traxi LLC	3
10	Neil Demchick	Invotex Group	3
11	Anthony Pacchia	Traxi LLC	3

Rankings include assignments in which professional was hired as financial adviser to creditors, unsecured creditors, secured creditors or to lenders

Source: www.BankruptcyInsider.com

Searching for its niche

Despite a shifting product lineup, Silicon Graphics posts losses



Silicon Graphics Inc. was one of several companies in the summer of 2006 to stage a rights offering to reduce exit financing debt, a decision that now appears prudent.

But analyst Rob Enderle of **Enderle Group** says the inconsistent approach he believes was largely responsible for SGI's bankruptcy filing continues to be an issue more than a year after the company's emergence.

Fortunately, SGI has cleaned up its troublesome leverage situation.

When the Mountain View, Calif.-based company submitted a Chapter 11 petition on May 8, 2006, it was known for a bevy of technological products, and even as a pioneer for some.

It also, however, was buried in \$664.3 million in total liabilities, including more than \$300 million in debt from a revolving credit line, term loan and three classes of notes.

After obtaining two debtor-in-possession loans and forging a settlement with several parties that ultimately increased distributions to both unsecured creditors and a subordinated class of noteholders, SGI filed a reorganization plan that handed senior noteholders 93% of its equity.

During the case, a lawyer close to the proceedings said SGI needed equity—and not simply an exit loan—and that a debt-for-equity swap “simply wasn't going to do it for them.”

Indeed, through a rights offering backstopped by noteholders **Encore Fund LP**, **Quadrangle Master Funding Ltd.** and **Watershed Technology Holdings LLC**, the company raised \$57 million.

A \$115 million exit loan from **Morgan Stanley Senior Funding Inc.** and **GE Capital Corp.** provided additional funds. (Mor-

gan Stanley extended an \$85 million term loan, while GE offered a \$30 million revolver.)

When SGI announced its emergence on Oct. 17, 2006, the \$76 million in prepetition bank debt owed to **Wells Fargo Foothill Inc.** and **Ableco Finance LLC** was gone. SGI also shed \$196.5 million in senior note debt as well as \$56.8 million in junior note debt from former subsidiary Cray Research Inc.

Armed with a much lighter debt load, SGI had the breathing room it needed to try to conquer its next hurdle—the business model Enderle describes as historically lacking a “cohesive strategy.”

When SGI filed for bankruptcy, it bemoaned a series of investments in strategies and technologies “that yielded less than expected results.”

In its latest earnings releases, the company says it has transitioned in the past several years from a focus on legacy systems based on Mips processors and Irix operating systems to systems based on “industry-standard processors” and the Linux operating system.

But “they've still been struggling [to answer] ‘what business are we in?’” Enderle says. “I still view them as a company trying to find its niche.”

(SGI didn't return several requests for comment for this story.)

Enderle believes that difficulty has been reflected in “revolving door”

management at SGI. In the past year alone, it has hired a senior vice president of worldwide sales, a VP of corporate strategy, a chief accounting officer and controller (who has since left), and a CEO.

Current chief executive Robert “Bo” Ewald has been in the position only since April 9, days after Dennis McKenna—who had been elected as president and CEO in January 2006—resigned from his seat on the board.

On the flip side, however, Watershed and Quadrangle showed their commitment to SGI by buying up GE Capital's piece of the exit loan on Sept. 11. On the same day, SGI reduced its total commitment on the revolver by \$10 million and raised the rate by 175 basis points in exchange for altered covenants.

And SGI has asserted in regulatory filings that since emerging from bankruptcy it has engaged in a whirlwind of activity—including the management turnover and new clustered computing products—that will right its sales declines.

That said, SGI has posted net losses for four straight quarters.

And though it boosted available cash to \$70 million as of late June (compared with \$55 million a year earlier) and has no outstanding balance on its \$30 million revolver, cash on hand already had shrunk to \$54.5 million as of Sept. 28.

The results seem to have weighed on SGI's shares.

Since debuting at \$19.50 on Oct. 23, 2006, the stock climbed as high as \$30.66 before plummeting to \$15.14 on Nov. 9.

“It doesn't seem like they're focused on the market,” Enderle summarizes. “It seems like they're focused on the technology.” ■

—Ben Fidler

TIMELINE OF SILICON GRAPHICS BANKRUPTCY

- **May 2006** Silicon Graphics files for Chapter 11
- **Oct. 2006** SGI emerges from bankruptcy
- **April 2007** Company hires new CEO
- **Sept. 2007** Watershed, Quadrangle buy exit revolver
- **Nov. 2007** Stock hits 52-week low

Source: www.BankruptcyInsider.com